



Agenda Date: 9/24/03
Agenda Item: 4C

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE)	ORDER OF APPROVAL
IMPLEMENTATION OF THE FEDERAL)	
COMMUNICATION COMMISSION'S)	
TRIENNIAL REVIEW ORDER)	DOCKET NO. TO03090705

(SERVICE LIST ATTACHED)

BY THE BOARD:

On August 21, 2003, the Federal Communications Commission (FCC) issued its Triennial Review Order (TRO), which adopted new and revised rules aimed at promoting local telephone and broadband competition in CC Docket Nos. 01-338, 96-98, and 98-147. In its revised rules, individual States are charged with implementing vital aspects of the TRO related to the unbundling of the incumbent local exchange carrier's (ILEC) network pursuant to 47 U.S.C. § 251(c)(3).

The Order, which becomes effective on October 2, 2003, requires State commissions to conduct a detailed analysis to determine whether competitive local exchange carriers (CLEC) are impaired without access to specific unbundled network elements (UNEs). If impairment is found, the UNE will continue to be unbundled at rates consistent with the FCC's Total Element Long Run Incremental Cost (TELRIC) methodology. The rules generally require State commissions to perform an analysis to determine if CLECs would be impaired under 47 U.S.C. § 252(d)(2)(B) without unbundled access to certain loops, transport, and local circuit switching.

The TRO establishes two separate tracks: one that must be concluded by States within ninety days and the other that must be concluded within nine months. In its Order, the FCC determined that circuit switching for enterprise market customers¹ no longer needs to be unbundled based on a

¹ The enterprise market is defined by the FCC as customers served by DS1 and above loops. Generally, it is only medium and large-sized business customers that purchase these types of facilities.

presumptive finding of no impairment. States will have ninety days, or until December 30, 2003, to rebut the national finding. Numerous other issues must be resolved within nine months from the effective date of the FCC's Order.

In order for the Board to address these issues in a timely manner, the Board will initiate a review on its own motion. Therefore, we invite interested parties to file initial comments and seek intervention status no later than October 3, 2003, and to file reply comments by October 10, 2003, on the issues contained in the FCC's TRO and the time frames within which each has to be addressed. Comments should be limited to the necessary steps that the Board needs to take to implement the FCC's Order and whether the presumptive findings within the Order should be challenged at the state level. The comments should also specifically identify those issues that the parties believe must be addressed in the ninety-day and nine-month time frames set out in a matrix form and provided in an electronic format along with the comments. A preliminary schedule is attached to this Order.

The Board DIRECTS the parties that wish to contest the FCC's rebuttable findings related to enterprise markets to file a formal petition with the Board no later than October 3, 2003. The petition must identify specific markets and provide detailed evidence to support the company's contention that impairment exists within those markets consistent with the requirements in the FCC's Order. Such proofs must include, at a minimum, comprehensive customer-specific data including, but not limited to, the total number of customers served in New Jersey by the company at the DS1 or higher level in combination with ILEC unbundled switching, their geographic location and a comprehensive description of the impairment faced by the company in serving these customers without access to unbundled switching. Absent such filing by any party, the Board may determine not to challenge the FCC's presumptive finding related to enterprise markets.

Because certain other Board decisions may be impacted by the implementation of the TRO², the Board also seeks comment on the merit of reviewing these issues contemporaneously with the TRO. In addition, we ask the parties to comment on whether existing Board rulings are impacted by the TRO and, if so, what if any action the Board should take with regard to such rulings.

² For example, two earlier decisions notable, the Board Summary Order in Docket No. TX98010010 approved by the Board on September 29, 1999 and the Board's Order on Reconsideration in Docket No. TO00060356 approved on July 15, 2002, contemplated that the Board would revisit both the UNE-P and hot cut issues within certain time frames. In the Summary Order, the Board acknowledged that it should revisit the UNE-P issue to "determine whether one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P" is available. (Summary Order at 5). The Board intends to utilize the outcome of the nine-month proceeding as the resolution to the review as described in paragraph 13 at page five of the Summary Order. In addition, in the Board's Order on Reconsideration, the Board recognized that VNJ's promotional hot cut rate would expire in March of 2004. Therefore, the Board required VNJ to make a filing 6 months prior to the expiration of the promotional hot cut rate and for Staff to initiate a process to examine whether automation of hot cuts has become possible. (Order on Reconsideration at 38)

In order to address the issues contained in the TRO, the Board DIRECTS the advising Deputy Attorney General and the Director of the Division of Telecommunications to conduct a pre-hearing conference on October 15, 2003 to identify specific issues that need to be resolved by the Board and to establish a procedural schedule for the Board's consideration. Lastly, in order to facilitate the proceeding, the Board HEREBY designates Commissioner Hughes as the Presiding Officer in this matter.

DATED: September 24, 2003

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY